



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

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| Agency Name: | Department of Environmental Quality |
| VAC Chapter Number: | 9 VAC 20-110 |
| Regulation Title: | Regulations Governing the Transportation of Hazardous Materials |
| Action Title: | Proposed |
| Date: | November 16, 2001 |

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. By Virginia statute, these regulations shall be no more restrictive than any applicable federal laws or regulations.

Basis*

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

State Authority

Section 10.1-1450 requires the board to promulgate regulations “designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported.” This section also requires the regulations to be no more restrictive than any applicable federal laws or regulations. Section 10.1-1454 states that “any person transporting hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of this article, except when such transportation is excluded from regulation under the laws or regulations of the United States.” The department incorporates federal regulations into state regulations to maintain consistent requirements for transporters of hazardous materials. The web site addresses for the full text of sections cited above are:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1450> for Section 10.1-1450; and
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1454> for Section 10.1-1454.

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulatory action will provide consistency between federal and state regulations governing the transportation of hazardous materials. By amending the state regulations to incorporate federal regulations, law enforcement officers in the Commonwealth will be able to protect the public from improper transportation of hazardous materials. The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. By Virginia statute, these regulations shall not be more restrictive than any applicable federal laws or regulations.

Substance*

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The regulations are being amended to incorporate sections of 49 Code of Federal Regulations in effect on October 1, 2001. Additionally, text referencing the director issuing variances from physical qualification requirements to drivers transporting hazardous materials has been removed from the regulations since current statute no longer gives the Director of the Department of Environmental Quality the authority to issue these variances.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The public and the Commonwealth will benefit from amending these regulations. This amendment incorporates federal regulations into state regulations. By incorporating current federal text, the public and the regulated community will benefit from being regulated by federal and state regulations that are consistent. This amendment will assist law enforcement officers in the Commonwealth with protecting the public from improper transportation of hazardous materials.

There are no disadvantages to the public or the Commonwealth.

Locality Particularly Affected*

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality would be particularly affected by the proposed regulation.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing, by e-mail, or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. E-mail comments must include the full name and the mailing address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

Since regulations governing the transportation of hazardous materials are currently enforced in the State of Virginia, there are no additional costs associated with the enforcement of the proposed regulations.

Transporters of hazardous materials are regulated by federal regulations and since Virginia incorporates federal regulations by reference, no additional costs will be placed upon transporters of hazardous materials as a result of this regulatory amendment.

This amendment will not impact small businesses since they are currently subject to federal regulations governing the transportation of hazardous materials.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

9 VAC 20-110-10 Definitions

Definitions for “coordinator” and “monitor” are being revised. The definition of “variance” is being removed.

9 VAC 20-110-20 Authority for regulation

Additional language is being added to this section that gives additional information about the statute that directs the Board to promulgate these regulations.

9 VAC 20-110-30 Purpose of Regulations

This section is being clarified to state that shippers of hazardous radioactive materials need to register if the radioactive materials are subject to advance notification requirements prior to transportation.

9 VAC 20-110-40 Administration of regulations

Section 383 of 49 CFR is no longer being incorporated by reference into these regulations since the Virginia Department of Motor Vehicles has promulgated regulations governing commercial driver's licenses. (24 VAC 20-60).

9 VAC 20-110-100 Application of Administrative Process Act

The citation to the Administrative Process Act has been changed to reflect the current citation of the Administrative Process Act.

9 VAC 20-110-110 Compliance

Changes have been made to this section to incorporate sections of 49 CFR as in effect October 1, 2001. An additional section is being incorporated into the regulations that requires transporters of hazardous materials to register with the federal government. The section no longer incorporates commercial driver's license requirements.

9 VAC 20-110-115 Variance from physical qualification requirements for drivers of vehicles transporting hazardous materials

This section is being repealed since the statute has been revised and the Director of the Department of Environmental Quality is no longer directed by statute to issue variances from physical requirements. The Commissioner of the Department of Motor Vehicles is now responsible for issuing these variances.

9 VAC 20-11-121 Register of Shippers

This section has been clarified to state that every shipper transporting or proposing to transport hazardous radioactive materials requiring advance notification must register with the Department of Emergency Management.

9 VAC 20-110-122 Monitoring and Transportation

Language has been added to this section clarifying that shipments of radioactive materials requiring advance notification shall notify the coordinator of the Department of Emergency Management prior to the shipment taking place.

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Code of Virginia mandates the promulgation of the regulations governing the loading, unloading, packing, identifying, marking, placarding, storing, and transporting of hazardous materials, so there is no alternative to their promulgation. The Code of Virginia also states that the regulations promulgated may be no more restrictive than applicable federal laws and regulations. The Regulations Governing the Transportation of Hazardous Materials incorporate federal requirements for loading, unloading, packing, identifying, marking, placarding, storing, and transporting hazardous materials. Any deviation from federal requirements would be in conflict with state statute. This approach is also the least burdensome method for regulating transporters of hazardous materials. Transporters of hazardous materials are already aware of federal regulations governing the transport of hazardous materials and are responsible for compliance with federal regulations.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The department, in conjunction with other various state agencies, conducted a review of the proposed regulation and has determined that the proposed changes clarify the regulations.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The periodic review of these regulations is required under Executive Order Twenty-Five (98) and will be performed as required under the executive order. The regulations will be evaluated to determine if the regulations are consistent with applicable federal regulations and the Code of Virginia. It is anticipated that the periodic review will take place in 2004. The department will

review the regulations for consistency with federal regulations and will also review the regulations for consistency with state statute.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action will protect families' health and the environment by addressing the need for consistent federal and state regulations governing the transportation of hazardous materials. By amending the state regulations to incorporate federal regulations, law enforcement officers in the Commonwealth will be able to protect the public from improper transportation of hazardous materials. These regulations will not impact disposable family income since transporters of hazardous materials are already required to comply with federal regulations on transportation of hazardous materials.